

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 173 of 1997

in

MISC.CIVIL APPLICATION No 1979 of 1996

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes.
2. To be referred to the Reporter or not?-Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement?-Yes.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

BHARATKUAMR CHHOTALAL SHAH

Versus

BHUPENDRA C THAKKAR

Appearance:

MR SV PARMAR for Appellant
MR GM JOSHI for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR HS MUNSHAW for Respondent No. 4

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 05/05/99

The appellant herein is the petitioner in Special Civil Application No.3062 of 1996. In the Special Civil Application, he challenged the appellate order passed under Section 9 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972. The appellant has been doing business in furniture in a shop allotted to him by the Housing Board. The 1st respondent is staying in the residential premises on the upstairs portion of the shop. He filed a complaint before the Housing Board, alleging that the appellant has been using electric machines in the manufacturing process of furniture and, thereby, causing nuisance to him and members of the family and disturbance is being caused to sleep and education of the children. The Competent Authority ordered eviction of the appellant from the premises. Aggrieved by the same, he filed an appeal before the City Civil Court and the same was rejected and against the order of the City Civil Court, he filed the Special Civil Application. The 1st respondent herein filed an application for impleading himself in the Special Civil Application filed by the appellant. The application was opposed by the appellant and by an order dated 12.2.1997, the application was allowed and the appellant filed a review application. The review application was dismissed and the learned single Judge held that the order of eviction was passed pursuant to the complaint filed by the 1st respondent herein and, therefore, he was a necessary party as well as a proper party and, thus, the impleading application was allowed. Aggrieved by the same, the present appeal is filed.

We heard the counsel for the appellant as well as the counsel for the 1st respondent. The counsel for the appellant contended that the 1st respondent is not a necessary party and the learned single Judge erred in holding that he was a necessary and proper party to be impleaded. According to the appellant, the dispute is between the appellant and the Housing Board and to determine such questions, the presence of the 1st respondent is not necessary. The counsel for the 1st respondent contended that the order of eviction was passed on the basis of the allegation made in the complaint filed by the respondent No.1 and a decision therein would affect his rights and, therefore, he was a necessary party. It was also submitted that in the appeal preferred before the appellate authority, the 1st respondent herein was made a party, and even then, he was not impleaded in the Special Civil Application.

The counsel for the appellant relied on two decisions in Life Insurance Corporation of India and another v. Gangadhar Vishwanath Ranade (Dead) by LRs., (1989) 4 SCC 297, and Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and others, (1992) 2 SCC 524. The decision in (1989) 4 SCC 297 was in an appeal preferred by the L.I.C., wherein it was contending that the appellant was not liable to pay interest for the delayed payment of the amount and as the delay had occurred on account of the notices issued by the Income Tax Department, the Income Tax Department also should be made a party to the proceeding. This contention was rejected by the Supreme Court. It was held that the claim was made only against the L.I.C. and no relief was claimed in the alternative or otherwise against the I.T.O. and, therefore, the I.T.O. was not a necessary party. It was held that the claim made in the writ petition giving rise to the appeal was for payment of interest by the appellant and as no relief had been sought against the I.T.O., for effective adjudication of the LIC's liability towards the respondent, the presence of the I.T.O. was not necessary. The dictum laid down in the said case has no application to the facts of the present case for the reason that the 1st respondent herein is vitally interested in the outcome of the order that may be passed in the Special Civil Application and, therefore, he is a necessary party.

The next decision relied on is Ramesh Hirac...

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Kundanmal v. Municipal Corporation of Greater Bombay and others, (1992) 2 SCC 524. That is a case which arose out of a notice issued by the Municipal Corporation of Bombay under Section 351 of the Bombay Municipal Corporation Act against a person, who was in possession of the petrol pump, alleging that there were certain unauthorised construction in its premises. The Hindustan Petroleum Corporation, which was the lessee of the premises, filed an application for impleadment. The Court held that the Hindustan Petroleum Corporation was not a necessary party as the plaintiff was not seeking any relief against the Corporation. In paragraph 14 of the judgment, the Supreme Court laid down the dictum and it was held :-

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"... It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main

objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.

(emphasis supplied)

From the above dictum, it is clear that if a person is legally interested in the action or if the litigation may lead to a result which will affect him legally by curtailing his legal rights, he has got a right to be impleaded in the proceedings. In the instant case, the order that may be passed in the Special Civil Application may affect his rights as the 1st respondent is the person, who made the complaint before the authorities that the business carried on by the appellant at the premises was causing nuisance to the 1st respondent. A decision on this question may ultimately affect the rights of the 1st respondent.

In a similar situation, this court in *Panjabhai Dahyabhai Patel v. Shah Jayantilal Manilal and others*, VI-1965 GLR 849, has considered and held that a complainant shall be a necessary party and should be heard in such proceedings. The appellant therein was a Councillor of a Municipality. Order was passed by the Collector against him, disqualifying him and he filed an appeal under Section 28(2) of the Bombay Municipal

Boroughs Act. The order of disqualification passed was pursuant to the complaint made by a person, who filed an application to get himself impleaded in the proceedings. It was held by the Division Bench of this Court that even in the appellate proceedings, the person, who submitted the complaint was a necessary party as he was interested in the final decision of the application and the person who submitted the complaint should have been heard while considering the appeal under Section 28(2) of the Act.

In the present case, the final decision in the Special Civil Application may affect the rights of the 1st respondent. Hence, he has a right to be heard in such proceedings. Therefore, we do not think that he is an unnecessary party and the learned single Judge was perfectly justified in holding that he is to be impleaded in the Special Civil Application as a party-respondent. The Letters Patent Appeal is without any merit and it is accordingly dismissed.

(apj)